

MAR 24 2008

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

SOLOMON BITTON SIMTOB,

Defendant - Appellant.

No. 07-30292

D.C. No. CR-96-00025-SEH

MEMORANDUM*

Appeal from the United States District Court
for the District of Montana
Sam E. Haddon, District Judge, Presiding

Submitted March 18, 2008**

Before: FISHER and TALLMAN, Circuit Judges, and EZRA, United States
District Judge.***

The district court's 36-month revocation sentence was reasonable. The
district court made clear that it was not placing any special emphasis on the

* This disposition is not appropriate for publication and is not precedent
except as provided by 9th Cir. R. 36-3.

** This panel unanimously finds this case suitable for decision without
oral argument. *See* Fed. R. App. 34(a)(2).

*** Honorable David A. Ezra, United States District Judge for the District
of Hawaii, sitting by designation.

seriousness of Simtob's criminal conduct. *See United States v. Simtob*, 485 F.3d 1058, 1063–64 (9th Cir. 2007). Instead, the district court relied primarily on Simtob's "continued pattern of unlawful behavior," a permissible consideration under 18 U.S.C. § 3583(e). *Id.* at 1063. Given Simtob's extensive criminal history and the likelihood of recidivism, we cannot say that the sentence was unreasonable. *See generally Gall v. United States*, 128 S. Ct. 586 (2007).

Because the government properly raised its objection to Simtob's failure to file a timely notice of appeal, we are required to dismiss the portion of Simtob's appeal challenging his 2005 conviction and sentence. *See United States v. Sadler*, 480 F.3d 932, 937–40 (9th Cir. 2007).

AFFIRMED in part; DISMISSED in part.